

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of)
Chen et al.) Patent Pending
)
Serial No.: 10/676,965) Examiner: Kwasi Karikari
) Group Art Unit: 2617
Filed: October 1, 2003)
) Confirmation No.: 8121
For: Method and Apparatus to Improve CDMA)
Reverse Link Performance)
)
Attorney's Docket No: 4740-212)

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December 10, 2007

Date

Laura A. Wade

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RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

In response to the Notification of Non-Compliant Appeal Brief mailed by the Office on 19 November 2007, Applicant timely resubmits herewith copies of the originally-filed Appeal Brief, filed 24 August 2007. No changes were made to the Appeal Brief because the compliance requirements stated in the Notification are inconsistent with the controlling requirements appearing in 37 C.F.R. § 41.37. In other words, Applicant believes that the examiner has asked Applicant to comply with requirements that are inconsistent with the governing rules.

In more detail, the Notification states that 37 C.F.R. § 41.37(c)(1)(v) requires that the "Summary of Claimed Subject Matter" section in the Brief must include details for each dependent claim that is separately argued in the subsequent "Argument" section. In contrast,

Applicant's reading of the regulation is that only separately argued dependent claims in means-plus function form must be detailed in the Summary section. In February 2006, a Mr. Dale Shaw of the Board of Patent Appeals and Interferences (571-272-9797) left a voice mail with Michael D. Murphy confirming that 37 C.F.R. § 41.37(c)(1)(v) does not require detailing separately argued dependent claims in the Summary section of the Brief, unless those claims are in means-plus-function form. Michael D. Murphy (Registration No. 44, 958) is an attorney serving as one of the applicant's representatives.

In short, the undersigned believes that the Brief was rejected as non-compliant only because it did not detail the separately argued dependent claims in its Summary and that such details are not actually required by the regulations unless the dependent claims are in means-plus-function form. (The dependent claims at issue here are not in means-plus-function form, nor has the examiner alleged such.) On that basis, and in response to the Notification of Non-Compliant Appeal Brief, the originally-filed Brief is resubmitted herewith.

If this resubmission is deemed in any way to be less than fully responsive to the Notification, the applicant respectfully requests a more detailed explanation of the Brief's points of non-compliance and a further opportunity to bring the Brief into full compliance.

Respectfully submitted,

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